

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 16-69V

Filed: April 7, 2016

Unpublished

SHIRLEY GROSSMAN,

Petitioner,

SECRETARY OF HEALTH
AND HUMAN SERVICES,

Respondent.

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Ruling on Entitlement; Damages
Decision Based on Proffer; Concession;
Pneumococcal Conjugate Vaccine;
Pevnar 13 Vaccine; Shoulder Injury
Related to Vaccine Administration;
("SIRVA"); Significant Aggravation;
Special Processing Unit ("SPU")

Maximillian Muller, Muller Brazil, LLP, Dresher, PA, for petitioner.

Gordon Shemin, U.S. Department of Justice, Washington, DC, for respondent.

RULING ON ENTITLEMENT AND DECISION AWARDING DAMAGES¹

Dorsey, Chief Special Master:

On January 12, 2016, petitioner filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*,² (the "Vaccine Act" or "Program"). Petitioner alleges that she suffered significant aggravation of a prior shoulder injury following the administration of the Pevnar 13 vaccine (a pneumococcal conjugate vaccine) on March 12, 2015. Petition at 1. Petitioner further alleges that she received the vaccination in the United States, suffered the residual effects of the significant aggravation for more than six months, and neither she nor anyone else has received compensation for her significant aggravation. *Id.* at ¶¶ 3, 17, 20. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On April 7, 2016, respondent filed her Rule 4(c) report and Proffer on Damages in which she concedes that the case is appropriate for compensation.

¹ Because this unpublished ruling and decision contains a reasoned explanation for the action in this case, the undersigned intends to post it on the United States Court of Federal Claims' website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, § 205, 116 Stat. 2899, 2913 (codified as amended at 44 U.S.C. § 3501 note (2012)). In accordance with Vaccine Rule 18(b), petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, the undersigned agrees that the identified material fits within this definition, the undersigned will redact such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all "§" references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

Respondent's Rule 4(c) Report and Proffer on Damages at 1. Specifically, respondent "has concluded that petitioner's injury is consistent with a shoulder injury related to vaccine administration (SIRVA), and that it was caused in fact by the pneumococcal conjugate vaccine administered on March 12, 2015." *Id.* at 3. Respondent further agrees that "petitioner has satisfied all legal prerequisites for compensation under the Act." *Id.* at 4.

Additionally, "[r]espondent proffers that petitioner should be awarded \$70,632.51, which represents all elements of compensation to which petitioner would be entitled under 42 U.S.C. § 300aa-15(a)." Respondent's Rule 4(c) Report and Proffer on Damages at 4. Respondent represents that petitioner agrees with the proffered award. *Id.*

In view of respondent's concession and the evidence before me, the undersigned finds that petitioner is entitled to compensation. Further, based on the record as a whole, the undersigned finds that petitioner is entitled to an award as stated in Respondent's Rule 4(c) Report and Proffer on Damages.

Pursuant to the terms stated in Respondent's Rule 4(c) Report and Proffer on Damages, the undersigned awards petitioner a lump sum payment of \$70,632.51 in the form of a check payable to petitioner, Shirley Grossman. This amount represents compensation for all damages that would be available under § 15(a).

The clerk of the court is directed to enter judgment in accordance with this decision.³

IT IS SO ORDERED.

s/Nora Beth Dorsey
Nora Beth Dorsey
Chief Special Master

³ Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.